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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/345,809	07/02/1999	DANIEL D. CHRISTENSEN	06005/35525	1692

7590 04/15/2004

ROGER A HEPPERMAN
MARSHALL O'TOOLE GERSTEIN MURRAY & BORUN
6300 SEARS TOWER
233 SOUTH WACKER DRIVE
CHICAGO, IL 606066402

EXAMINER

LEE, CHRISTOPHER E

ART UNIT	PAPER NUMBER
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2112

DATE MAILED: 04/15/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action

Application No.

09/345,809

Applicant(s)

CHRISTENSEN ET AL.

Examiner

Christopher E. Lee

Art Unit

2112

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

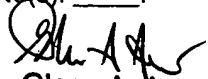
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-26.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s): _____.
10. ☒ Other: See Continuation Sheet


Glenn A. Auve
Primary Patent Examiner
Technology Center 2100

Continuation of 5. does NOT place the application in condition for allowance because:

In response to the Applicants' arguments with respect to "the Pentikäinen reference is non-analogous art" on the Response pages 2-4, the Examiner respectfully disagrees.

Despite of the Examiner having properly responded that AAPA, Burns, and Pentikäinen references are analogous arts of networked communication (e.g., communications in a process control network, communications in a data telecommunication system, etc.; See paragraph 12 of the Office Action mailed on 7th of January 2004; hereinafter the Final Rejection), the Applicants assert the Examiner's interpretation of AAPA, Burns, and Pentikäinen references is much too broad. However, the Examiner's position is to give claims their broadest reasonable interpretation in light of the supporting disclosure, such as the art of communication. See *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Even if Pentikäinen reference is not to be considered analogous art, the Examiner recognizes that it has been held that a prior art reference must either be in the field of the Applicants' endeavor or, if not, then be reasonably pertinent to the particular problem with which the Applicants were concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Applicants were concerned with maintaining a consistency among Link Active Schedulers by way of automatically updating active schedule in them (See Application page 3, lines 3-13 and 19-23), and Pentikäinen reference is also in the field of the Applicants' endeavor, such that providing a data (i.e., active schedule) consistency among exchanges (i.e., Link Active Schedulers) by way of automatically updating said data (i.e., active schedule) in them (See col. 5, lines 9-18). And, the Applicants further allege that Pentikäinen reference does not suggest the subject matter "link active schedule", which is critical to maintaining communication on the databus in a process control system. However, this limitations are clearly taught by AAPA and/or Burns references as primary references (See paragraph 3 of the Final Rejection, claims 1, 5 and 6 rejection under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Pentikäinen, as an exemplary claim rejection).

Thus, the Applicants' arguments on this point are not persuasive.

In response to the Applicants' arguments that the Examiner's conclusion of obviousness for the 35 USC §103(a) rejection fails to establish a prima facie case of obviousness on the Response pages 4-5, the Examiner respectfully disagrees.

In contrary to the Applicants' statement, all the rejections under 35 USC §103(a) in the prior and the instant Office Action established a prima facie case of obviousness meeting the three basic criteria of the M.P.E.P. 2143.03 (8th ed. 2001). See the Office Action mailed on 7th of January 2004. Furthermore, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner has clearly pointed out rationale for appropriate combination of the references AAPA, Burns and/or Pentikäinen, and the combination suggests all the limitations of the claimed invention.

Thus, the Applicants' arguments on this point are not persuasive.

Continuation of 10. Other: The Applicants' response has not been entered because the Applicants didn't propose any amendment..